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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,560	10/31/2003	Thomas Grafenauer	03100132US	8411

7055 7590 12/10/2007  
GREENBLUM & BERNSTEIN, P.L.C.  
1950 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER
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FERGUSON, LAWRENCE D

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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12/10/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

# Office Action Summary

Application No.

10/697,560

Applicant(s)

GRAFENAUER, THOMAS

Examiner

Lawrence D. Ferguson

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2007.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 16-22 is/are pending in the application.  
4a) Of the above claim(s) 11-15 and 22 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-9 and 16-21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/6/07.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is in response to the amendment filed September 6, 2007.

Claims 1, 6 and 16 are amended rendering claims 1-9 and 16-21 pending, with claims 11-15 and 22 withdrawn as a non-elected invention.

The indicated allowability of claim 6 is withdrawn in view of the newly discovered reference(s) to Moriau et al (U.S. 6,006,486). Rejections based on the newly cited reference(s) follow.

### ***RESPONSE TO REQUEST FOR RECONSIDERATION***

2. Applicant maintains claim 22 links inventions I and II and should be examined with the elected invention. When all claims directed to the elected invention are allowable, should any linking claim be allowable, the restriction requirement between the linked inventions must be withdrawn. Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or requires all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability.

The requirement is deemed proper and is therefore made **FINAL**.

***Claim Rejections – 35 USC 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "for gluing fibers of the support board". There is insufficient antecedent basis for this limitation in the claim, as the term fiber has been deleted from claim 1.

***Claim Rejections – 35 USC § 103(a)***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 8-9, 16-19 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriau et al. (U.S. 6,006,486).

Moriau discloses a floor panel (column 1, lines 5-6 and 66-67) comprising a core (support board) made of compressed ground wood particles and binder material (column 3, lines 26-38) having a decorative top layer and a backing layer (termination

layers) (column 9, lines 1-11 and Figures 2-11) where the decorative top layer is interpreted as having a structured surface. Moriau discloses additional layers can be applied to the floor panel (column 9, lines 7-9) which appears to include cover layers, as in claim 21. Because the compressed material is made of medium density fibreboard and made of glued and compressed woodbased material, it is expected for the density of the top side of the support board to be lower than the density of the underside support board, for the support board to have a non-uniform density distribution over its cross section from the top side to the underside and for the density of the core to decrease from the top side and decrease from the underside to a substantial midpoint, which would result in a density distribution that is substantially parabolic in shape as in claims 1, 8, 16 and 20, absent any evidence to the contrary.

Although Moriau does not teach the gluing factor amount or density of the layers as in claims 2-3, density and gluing factor are optimizable features. In the absence of any evidence to the contrary, it would have been obvious to one of ordinary skill in the art to optimize the layers of the panel because discovering the optimum or workable range involves only routine skill in the art. The density and gluing factor directly affects the durability of the panel. *In re Aller* 105 USPQ 233 and see *In re Boesch*, 617 USPQ 215. Additionally, there is also no clear teaching away from the density and gluing factor of the panel by Moriau, as the reference does not exclude any values for the density or gluing factor. In claim 19, the phrase, "comprises a structure composed of a stamping" introduces a process limitation to the product claim. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is

the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966. Further, process limitations are given no patentable weight in product claims.

***Claim Rejections – 35 USC § 103(a)***

7. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriau et al. (U.S. 6,006,486) in view of Clausi (U.S. 5,855,832).

Moriau is relied on for instant claim 1 as above. Moriau does not disclose the panel comprising UF and isocyanates, as in claims 4-5 and 7. Clausi teaches a compressed wood fiber material having a binding agent including urea formaldehyde (UF) and isocyanate (column 1, lines 12-20, column 13, lines 35-40 and column 14, lines 37-39). Moriau and Clausi are both related to compressed woodbased fiber material. It would have been obvious to one of ordinary skill in the art for the adhesive material of Moriau to comprise UF and isocyanate because Clausi teaches these materials are conventional binding (adhesive) materials.

Although neither reference teaches the gluing factor for isocyanates, gluing factors are optimizable features. In the absence of any evidence to the contrary, it would have been obvious to one of ordinary skill in the art to optimize the core (support board) of the panel because discovering the optimum or workable range involves only routine

skill in the art. The gluing factor directly affects the durability of the panel. *In re Aller* 105 USPQ 233 and see *In re Boesch*, 617 USPQ 215.

***Response to Arguments***

8. The rejection made under 35 U.S.C. 102(b) as being anticipated by Kyutoku et al. (U.S. 5,145,732) and made under 35 U.S.C. 103(a) as being unpatentable over Kyutoku et al. (U.S. 5,145,732) and Kyutoku et al. (U.S. 5,145,732) in view of Clausi (U.S. 5,855,832) are withdrawn due to applicant amending the claims to include a compressed woodbased material instead of a compressed fiber material. Kyutoku does not teach a woodbased material.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is 571-272-1522. The examiner can normally be reached on Monday through Friday 9:00 AM – 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Ferguson  
Patent Examiner  
AU 1794



KEITH D. HENDRICKS  
SUPERVISORY PATENT EXAMINER